

Benchmarks – Handling User Agreements

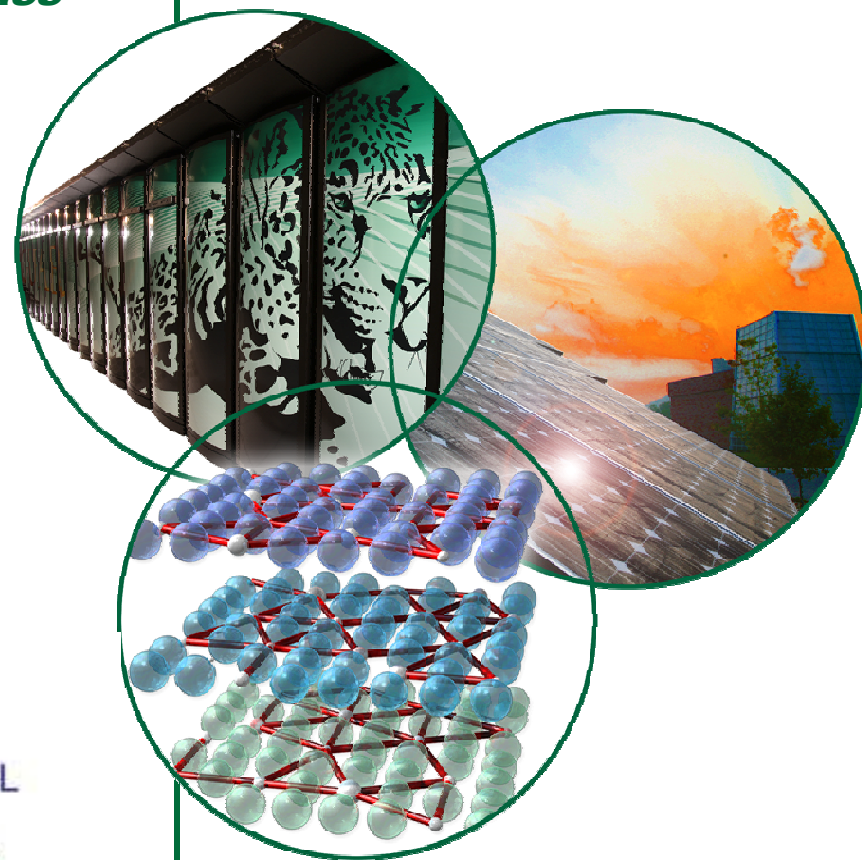
or Learning from the Best Kids in Our Class

Judy Trimble
Neutron Scattering Science User Office
Oak Ridge National Laboratory

National User Facility Organization
Annual Meeting
June 7-9, 2010



NATIONAL
USER
FACILITY
ORGANIZATION



 **OAK RIDGE NATIONAL LABORATORY**
MANAGED BY UT-BATTELLE FOR THE DEPARTMENT OF ENERGY

User Agreements – Why?

- **Convey that unique facilities are available and user may retain title to inventions**
 - Atomic Energy Act
 - The Non-nuclear R&D Act
 - Bayh-Dole Act of 1980
- **Referenced in DOE Prime Contracts**
- **Included in DOE Order 142.1. DOE Facilities Technology Partnering Programs**
- **Considered good business practice**
- **What's return on investment?**

User Agreement References

- **Referenced in Prime Contract**

- *The Contractor is responsible for accommodating ... guests of the Laboratory every year, and maintaining over 700 agreements to engage the 11 National User Facilities. Agreements are in place with other government agencies, industries, universities, and international participants.*
(DOE-AC05-00OR22725. Modification No. 341. Section C-4(a)(2))
- *Notify non-Federal sponsors of WFO activities, or non-Federal users of user facilities, of any relevant Intellectual Property interest of the Contractor prior to execution of WFOs or user agreements; and...*
(DOE-AC05-00OR22725. Modification No. 341. Section I.141.(d) (9))
- *Work for Others (WFO) and User Facility Agreements (UFAs) are not CRADAs and will be available for use by the Contractor in addition to CRADAs for achieving utilization of employee expertise and unique facilities for maximizing technology transfer. The Contractor agrees to inform prospective CRADA participants, which are intending to substantially pay full cost recovery for the effort under a proposed CRADA, of the availability of alternative forms of agreements, i.e., WFO and UFA, and of the Class Patent Waiver provisions associated therewith.*
(DOE-AC05-00OR22725. Modification No. 341. Section I.141.(n) (4)(i))

- **Included in DOE Order** - *Submit to DOE, as appropriate, technology partnering agreements for review and approval, as required by the facility contract.*
(DOE O 482.1, DOE Facilities Technology Partnering Programs)



User Agreements – Who Uses Them?

- DOE – multipage documents that address intellectual property rights, indemnity and liability, and more
- NSF – not subject to the statutes and don't use except UNOLS (University National Oceanographic Laboratory System fleet)
- NIST – one-page form covers policy and signed by NCNR user
- International Institutions – 11 facilities surveyed by Cathy Knotts. Most have no agreement, one has a rules-based agreement signed by user and formal 1-page proprietary agreement.

User Agreements at Other Facilities – Short and Rules Based

Japan Synchrotron Radiation Research Institute (JASRI) 1-1-1 Kouto, Sayo-cho, Sayo-gun, Hyogo 679-5198 JAPAN
Phone: +81-(0)79-58-0961 Fax: +81-(0)79-58-0965 e-mail: spj@spring8.or.jp

SPRING-8

Proprietary Use Agreement for Public Beamline

1. Application Number 2. Beamline Number

3. Experiment Title for Public Announcement

4. Project Leader's Name and Affiliation

I hereby agree to pay the fee for proposal with the Terms and Conditions set forth in the attached "Rules for Users".

Org:

Proposal Application
Logged in as
 You are logged in as 0000001
 Tarou Koukido

Information
 Application No. : 2557 / General
 Proposal / Non-Proprietary
 Research

1. Japan Synchrotron Radiation Research (hereinafter referred to as the "Organization" designated by the Organization. The Organization shall be responsible for the payment of the fee for the use of the beamline.

2. The beamtime fee shall be 480,000 yen per hour.

3. If the Organization wishes to change (reduce) the beamtime fee, it must obtain approval from JASRI at least one month in advance.

4. In the event that the Organization loses payment, the fee shall be calculated based on the number of hours used. The Organization may not make a claim against JASRI for beamtime loss.

5. Any results obtained through the use of SPRING-8 shall be made available to the public through the use of SPRING-8.

6. JASRI shall have the primary responsibility for the management of the samples and results, JASRI shall provide reasonable cooperation from the date of signing.

Information provided in the solid-line

When you click OK, the "Rules for Users" will display. To complete the application process, you need to agree to the "Rules for Users" by clicking "I agree."

Agreement - In order to submit application, you need to agree to the rules for users.

Rules for Users (Non-proprietary)

Article 1: General Requirements
 SPRING-8 users (hereinafter referred to as "users") shall:
 (i) carry out the experiments only for peaceful purposes;
 (ii) take every appropriate measure to ensure the safety to their experiments;
 (iii) comply with the provisions of the SPRING-8 User Guide, issued by JASRI;
 (iv) comply with JASRI's instructions and directives relating to the use of the facility;
 (v) cooperate with other users to promote the safe and smooth operation of the facility.

Article 2: Personal Injury Insurance
 Users shall take out appropriate personal injury insurance before conducting experiments.

Article 3: Research Materials and Chemicals brought to SPRING-8
 Users who wish to bring research materials and chemicals to SPRING-8 shall:
 (i) first obtain authorization from JASRI;
 (ii) be responsible for the safe management of all such items at SPRING-8;
 (iii) take these items away when their experiment is complete.

Article 4: Use of Facilities and Equipment
 Users shall comply with JASRI's rules and regulations relating to the use of the facilities and equipment. Users shall follow instructions given by SPRING-8 facility managers and safety coordinators. Users shall restore SPRING-8 facilities and equipment to the condition in which they were found.

I do not agree. I agree.

Spring8, Japan

NEUTRON FACILITIES USER AGREEMENT # _____ Extension: y/n
BETWEEN
THE NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY
AND _____

The National Institute of Standards and Technology (NIST) and _____ (USER) do hereby enter into this Facilities User Agreement under the terms and conditions set out below, and NIST policies on the use of NIST equipment and Facilities.

Pursuant to this Agreement, USER is authorized to undertake certain research through the use of the NIST Research Reactor & CNRF (Facility) within the Reactor Radiation Division located in the Materials Science and Engineering Laboratory. This is a Director-Designated facility.

(1) USER shall be allowed to use the above-described Facility during the period commencing _____, and ending _____, subject to a schedule of use agreed to by NIST.

(2) NIST reserves the right to terminate this Agreement at any time and USER agrees to discontinue its use of the Facility upon receipt of written notice from the Director of NIST or the Directors designee.

(3) No charge will be made for use of the facilities.

(4) If, in connection with the use and operation of NIST facilities, USER discloses information to NIST which USER deems confidential and proprietary, USER understands that NIST and DoC will not be held liable for the disclosure and/or copying of data or information which NIST and DoC determine cannot lawfully be withheld or which a court of competent jurisdiction requires to be disclosed.

(5) USER agrees to hold NIST, Department of Commerce, and its officers and employees harmless from all liability that may arise solely out of USER's use and operation of the facility.

(6) USER agrees to comply with all NIST and Facility regulations while on NIST premises, including Health Physics and regulatory requirements, Industrial Safety regulations, and Security regulations.

(7) USER agrees not to use the name of NIST or the Department of Commerce on any advertisement, product or service which is directly or indirectly related to this Agreement, nor imply in any way that NIST or the Department endorses its products or services.

(8) USER and NIST acknowledge that the results of the research are not confidential and public access is permitted to the resulting data.

Full Name (Last, First, Middle): _____ SIGNATURE: _____
 Date: _____

Affiliation Name & Address: _____

Date of Birth: _____ Citizenship: _____ Social Security Number: _____

Place of Birth: _____ Email address: _____

NIST Host/Contact: _____ EMERGENCY Personal Contact Name & Phone#: _____
 APPROVED: _____
 Director, NIST Center for Neutron Research
 _____ Date: _____

NIST Center for Neutron Research,
 Maryland



NATIONAL
 USER
 FACILITY
 ORGANIZATION



Benchmark Handling of User Agreement

- ORNL Technology Transfer staff conducted telephone interviews with 3 Labs – ANL, BNL, and SNL
- Questionnaire sent to NUFO User Facility Administrators - at FNAL, LBNL, INL, JLAB, LANL, SLAC,
- Identify practices including
 - Website
 - Agreement management
 - Executing agreements
 - Tracking and metrics

**2010 NUFO Benchmarking
User Agreements**

User Facility _____

Laboratory _____

Contact Name _____

A Website

- 1 Do you post information about user agreements on your public web site (if yes, please answer questions A2 – A4)?
- 2 Do you post sample agreements?
- 3 Do you post a list of institutions with executed agreements?
- 4 What other information do you post?

B Agreement Management

- 1 Do your master agreements cover all of your laboratory's user facilities?
- 2 Do you execute an appendix?
- 3 If yes, is your appendix applicable to all of your laboratory's user facilities?
- 4 What are the terms (i.e., 5 years) of your master agreements and applicable appendices?

1

Received 6 Responses

Laboratory	User Facility	Contact(s)
ANL	APS	Strasser, Owens, Kinzler, and Langguth
BNL	ATF, AGS, CFN, NSLS, NSRL, RHIC, and Tandem	White-DePace, Patterson, and Price
LBNL	Molecular Foundry	Bunzow
ORNL	CNMS, HFIR, HFRIB, HTML, NCCS, NTRC, SHaRE, SNS	Kendrick
SLAC	SSRL	Knotts
SNL	CINT and OPARF	Shinn, Monson, and Weiss

Received 6 Responses

Laboratory	User Facility	Administ
ANL	APS	Strasser, C Le
BNL	ATF, AGS, CFN, NSLS, M RHIC, and Tandem	
LBNL	Mole	
ORNL		
		Knotts
		Shinn, Monson, and Weiss

Thank You

Benchmark Results

Website Information – 50% Post Institution List

Parameter	Response
Post Extensive Facility Information	Yes – 6
Post Sample Agreements	Yes – 6
Post List of Institutions with Agreements	Yes, public site – 3 Yes, internal site – 1 No - 2

Benchmark Results

Agreement Management – Shared, 5-Year Term, No Appendix

Parameter	Response
Shared Master Agreement	Yes – 5 Yes, except computing – 1
Appendix	Yes – 2 Yes, but eliminating – 1 No – 3
Shared Appendix	No – 2, project or facility specific
Master Term	5 years – 5 10 years – 1
Appendix Term	18 months – 1 5 years – 1
Additional Agreements	IP Acknowledgement Federal Agency Agreement Open Data Agreement
Standardized Changes	Yes – 3 No – 3



Benchmark Results

Executing Agreements – Negotiate Indemnity and Liability Clauses

Parameter	Response
Negotiate	Yes – 4 (qualifiers include try to avoid, if requested) Rarely – 1 No – 1
Areas Negotiated	Indemnity and Liability – 3 ••••• IP and Data Rights – 2 State Rights vs DOE Rights – 1 Provisions for Clarifying Computer Codes – 1 Interpretation and Applicability of Provisions for Others at the User Institution – 1
Processing DOE Approval for ***	Obtain Approval by E-mail – 5 (some seek internal reviews by IP attorney) Present Marked-up Versions – 1



Benchmark Results

Executing Agreements – Handled Centrally

Parameter	Response
Organization Sending	Sponsored Research Office/Group – 2 Guest, User, Visitor Center – 1 User Facility – 1 User Facility and Central Office – 1 User Research Administration – 1
Organization Negotiating	Sponsored Research Office/Group – 2 Not Applicable – 2 Central Office – 1 Guest, User, Visitor Center (w/ Legal) – 1
Organization Executing	Sponsored Research Office/Group – 2 User Facility Director – 2 Guest, User, Visitor Center – 1 User Facility and Central Office – 1

Benchmark Results

Executing Agreements

Focus is On-Site Users' Institutions

Parameter	Response
Each On-Site User Institution	Yes – 5 No – 1 (Executes IP Agreement for Each)
Each Remote User Institution	Yes – 2 No – 3 Not Yet – 1
Each Proposal Team Member (Who's Not Part of the On-Site Experiment Team) Institution	Yes – 1 No – 4 Unknown – 1

Opportunity for improved efficiency or possible risk?

Benchmark Results

Executing Agreements


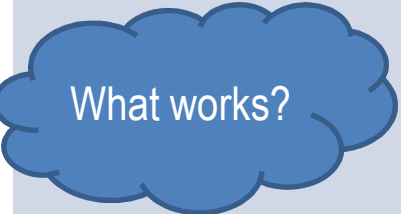
Priority New and Expiring Agreements

Parameter	Response
Transition to New Waivers Process	<ul style="list-style-type: none"> • Send sample new agreement with cover letter to identified contracts office when new proposal received. After proposal accepted the official copy of the agreement is sent for approval. • Implement new agreements for new users and existing user as the old agreements expire. • Send new agreements to institutions with expiring agreements and to new user institutions. • Priority given to new user institutions followed by institutions with man users. Notice sent to proprietary user institutions who visit frequently. • Full compliance by Oct 2010. Honoring old agreements for now. • Work with the user facilities.

Benchmark Results

Executing Agreements

Some Failures, Agreements in Place?

Parameter	Response
Failed Execution	Yes – 3 No – 2 (not yet) Unknown – 1 
Reason Execution Failed	<ul style="list-style-type: none"> Goco Labs have been difficult and hoping for model agreements for other government labs – 1 User Institution did not respond/execute – 2
Ensure Agreements in Place Before Work Begins 	<ul style="list-style-type: none"> Controlled by user data base toggle Communicate requirement to PI and coordinate as part of the proposal processing User facilities are responsible for meeting requirement User Office reviews safety assessments and ensures agreements in place Approval of user registration for guest appointment Facility managers execute and know needs.

Benchmark Results

Tracking and Metrics

Similar Volume, Process Long, Need MIS

Parameter	Response
Number of Agreements Executed	<ul style="list-style-type: none"> • 300-400 • ~300 • 280+ new • 234 • 239 NP and 12P
Cycle Time Minimum Mean Maximum	Not Tracked – 4 <1 to 4 days 2-3 months 7-9 months
Management Information System Tracking System Data Base	<ul style="list-style-type: none"> • Yes – 3 • No – 1 • Just starting with PeopleSoft – 1 • Migrating to another lab's software – 1



Benchmark Results

Additional Information and Comments

- Need standardized indemnity/liability provisions that are acceptable to state institutions would reduce processing time
- Users sign an acknowledgement that states they will comply with rules and terms of the user agreement and notify lab of pertinent changes
- All guests sign an acknowledgement form which notifies them that their institution has an agreement.
- User questionnaires used as part of user registration process

Benchmark Results – Conclusion and Recommendations

- **Improve and streamline processing to reduce cycle time and difficulties with ensuring agreement in place prior to users' arrival**
 - Registration Questionnaire provides valuable and needed information before experiment scheduled
 - Information/tracking systems needed
 - Execute agreements at the lab level
 - Evaluate value of Appendices
 - Eliminate negotiations and failed agreements to improve cycle time
- **Evaluate Federal Agency Agreements and standardized handling of idemnity and liability**
- **Consider value of user-specific rules-based agreements**
- **Define ROI**

Discussion and Actions

